IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3569 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAGAR SARKARI KARAMCHARI COOP.HSG. SOCIETY LTD.

Versus

STATE OF GUJARAT THROUGH SECRETARY

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr N.D.Gohil, Asstt. Govt.Pleader for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/06/2000

ORAL JUDGEMENT

1. The petitioner is a co-operative housing society which had demanded allotment of land under Section 23 of the Urban Land (Ceiling and Regulation) Act, 976 by a communication dated May 7, 1990 stating therein details

of survey numbers available for allotment. Somehow, no action was taken and, therefore,, on inquiries by the office bearers of the petitioner society,it was found that one of the survey numbers was under litigation and another survey number was allotted to some other society. The The petitioner society,therefore, made a supplementary demand of deficit land on 18th June, 1992. Said application came to be decided on 1st October, 1994 whereby a demand of Rs. 15, 10,934/- was made for the land allotted to the society. According to the petitioner society, the price fixed is much higher than the price that could have been fixed if the petitioner's application was decided earlier. The petitioner society, therefore, has approached this Court to ventilate this grievance against inaction or delayed action on the part of the respondent authorities.

2. Mr. Lakahni,learned advocate for the petitioner has reiterated the above facts. According to him, if the application of the petitioner society was decided immediately, the society could have got the land at much lesser price.To support his argument, he quoted the example of Surya Vandana society which has been granted land out of survey numbers which were applied for by the petitioner prior to that society. That society was allotted land at the rate of Rs.600/- per sq.mt. whereas, in the instant case, Mr. Lakhani submitted, the price is ranging from Rs.. 600/- to 1,300/- per sq. depending upon the plot allotted to the society. According to him, even the Revenue Minister has recommended price to be fixed commensurate with the price fixed for Surya Vandana society as well as one Government cooperative society.Mr.Lakhani submitted that these directions have also not been adhered to by the department and the petitioner is unduly taxed by demanding higher price.

3. Mr.Gohil, learned AGP has opposed this petition. He submitted that the price is fixed in accordance with the market rate prevalent at the relevant time. He submitted that Government machinery has to follow certain procedure which consumes time and when allotment is made, price prevailing at that point of time is considered. He further contended that Surya Vandana society had supplied all relevant documents in time and,therefore, decision was taken in respect of that society. Another fold of the submission was that one of the survey numbers demanded by the petitioner society was under litigation and,therefore, no decision could be taken. He,therefore, urged that the petition may be dismissed.

4. Having regard to the rival side contentions, it may be noted that there is no dispute about the entitlement of the petitioner society of the land and the land is already allotted as demanded. The only grievance is that the petitioner society's application tendered in 1990 was not decided for a long time. It would be worthwhile to note that the respondent authorities stated that all relevant documents were not supplied by the petitioner society. But no specific documents claimed to be not supplied are indicated. Mr.Lakhani drew attention of this Court as well as learned AGP that only one of the survey numbers was under litigation and rest of survey numbers could have been allotted to the petitioner society out of which,one survey number is allotted to Surya Vandana society, for which no explanation is coming forth from the respondent authorities. Mr.Lakhani stated that rest of survey numbers applied for by the petitioner society in 1990 are still available for allotment even today. This aspect has also remained uncontroverted.

5. Apart from the above aspects, it may be noted that the machinery has moved in a slow and sluggish manner. Delay is caused for allotment of land to the petitioner society. Such delay is tried to be explained away by taking shelter of procedural delays. But if dates are considered, the first application of the petitioner society made in May, 1990 was not responded to till 1992 and,therefore, after making inquiries, the petitioner society made supplementary demand on 18th June,1992 and thereafter only, allotment is made on 1st October, 1994.

6. The fixation of the price has to be made on the date of allotment. However, in the instant case,the date of allotment will not have to be taken into consideration for the reason that there was inordinate delay in considering the petitioner's application. In this regard, the decision in the case of Ashutosh Sarkari Karmachari. Housing Society Ltd, vs. State of Gujarat and another, 1995 (2) GLR 1419, may be referred to. In that case, the petitioner society had applied for land for constructing houses of its members and the price fixed for the land to be allotted to that society was fixed at Rs. 800/- per sq.mt. It was found that the price at which the land was allotted to other similarly situated societies around the time in which the petitioner society in that case made application was around Rs. 450/- per sq.mt. In light of that situation, the court set aside the fixation of price of the land to be allotted to the petitioner society at Rs. 800/- per sq.mt. and the matter was remanded to the State

Government for its fresh decision according to law, in light of the aforesaid reported ruling. The said decision was followed by this court in Shivkrupa Co-operative Housing Society Ltd. vs. State of Gujarat in Special Civil Application No.308 of 1995, decided on August 30, 1996(coram: A. N.Divecha,J.) and again,in the case of H.P.Joshi,Secretary of proposed Banshari Sarkari Karmachari Co.op.Housing Society Ltd. vs,State of Gujarat in Special Civil Application No. 2459 of 1999, decided on June 29, 1999 (coram: Y.B.Bhatt, J.) .This court is informed that these decisions have not been challenged and hold the ground as on today. In this view of the matter,the petition deserves to be allowed to the extent of quashing and setting aside the demand in question for the land in question.

7. Now,the next question is that what should be considered as reasonable time for fixing price that can be taken by the Government. In this regard, there could be no hard and fast guideline,but it would be reasonable if period of about eight to 12 months is given to the Government machinery to follow the procedure and fix the price. In the instant case, first application was given in 1990. Certain survey numbers demanded in that application are allotted in 1994 and,therefore,it would be reasonable to direct the authorities to fix the market price of the land in question prevailing around 1991/1992. The respondents are accordingly directed. The respondent authorities will fix the price as expeditiously as possible preferably within three months.

8. Petition is ,therefore, partly allowed. Rule made absolute to that extent with no order as to costs.

(A. L. Dave,J.)

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